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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

ROBERT A. BURKICH,)
Petitioner)
VS.)
)
UNITED STATES OF AMERICA,)
Respondent)

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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PETITIONER, pro se

QUESTIONS PRESENTED

I

WHEATHER THE SIXTH CIRCUIT COURT OF APPEALS AND THE U.S. DISTRICT COURT BELOW ERRANTLY DENIED THE CERTIFICATE OF APPEALABILITY (COA) WITHOUT AN INDIVIDUALIZED DETERMINATION OF THE CONSTITUTIONAL MERITS OF ALL CLAIMS ARISING FROM OUTRAGEOUS AND TERRORISTIC GOVERNMENTAL CONDUCT WHERE A CAREER CRIMINAL, ACTING AS A U.S. GOVERNMENT AGENT AND POSING AS A MAFIA "HIT MAN," MADE UNDISPUTED AND DOCUMENTED DEATH-THREATS AGAINST AND UNSUSPECTING PHYSICIAN, HIS WIFE, CHILDREN AND BUSINESS PARTNER TO ENTRAP THE DOCTOR IN A MAIL-FRAUD SCHEME?

II

WHETHER THE SIXTH CIRCUIT COURT OF APPEALS AND THE DISTRICT COURT BELOW ARBITRATILY SUBVERTED THE EXPRESS WILL OF CONGRESS AND THE MANDATES OF THE U.S. SUPREME COURT, TO DENY THE COA BY CREATING AN ABSOULTE, PROCEDURAL TIME-BAR TO CONSTITUTIONAL CLAIMS ACTIVELY CONCEALED FROM THE PETITIONER BY HIS CONFLICTED AND INEFFECTIVE COUNSEL AND ONLY DISCOVERABLE THROUGH MERE FORTUITY?

III

WHETHER THE SIXTH CIRCUIT COURT OF APPEALS AND THE DISTRICT COURT BELOW ERRANTLY DENIED THE PETITIONER'S ALTERNATIVE PLEA THAT HIS CLAIMS BE COUNTENANCED UNDER RULE 60 (b) AND THE WRIT OF CORAM NOBIS?

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DECISIONS BELOW

A copy of the November 23, 2004 Order of the Sixth Circuit Court of Appeals, denying Petitioner's application for a Certificate of Appealability (COA), is attached at Appendix A; the March 18, 2005 Order of the Sixth Circuit Court of Appeals denying a petition for rehearing en banc is attached at Appendix B; the August 6, 2004 Memorandum and Order of the United States District Court dismissing the § 2255 petition, etc., as untimely are not reported; a copy of same is attached at Appendix C.

JURISDICTION

The Order of the Sixth Circuit Court of Appeals denying a COA as being untimely was entered November 23, 2004. A petition for rehearing en banc was subsequently denied on March 18, 2005. Jurisdiction for the petition for writ of certiorari is conferred pursuant to 28 U.S.C., § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V and VI of the Constitution of the United States, guaranteeing, respectively, due process and Assistance of Counsel for defense:

AMENDMENT V

> No person shall be... deprived of life, liberty, or property, without due process of law.

AMENDMENT VI

> In all criminal prosecution, the accused shall... have the Assistance of Counsel for his defense.

The provisions of Amendments V and VI are enforced, in pertinent part, by 28 U.S.C. § 2255:

Rule 1.

> These rules govern the procedure in the district court on a motion under 28 U.S.C. § 2255:
>
> (1) by a person in custody pursuant to a judgment of that court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States...

The provisions of Amendments V and VI are enforced, in pertinent part, by 28 U.S.C. § 2244, as it applies with equal force to §§ 2254 and 2255:

SECTION 2244 (d) (1)

> (A) 1-year period of limitation...shall run from the latest of –
>
> (B) The date on which the factual predicate of the claim or Claims presented could have been discovered through the exercise of due diligence.

The provisions of Amendments V and VI are further enforced by F.R.C.P., Rule 60:

RULE 60 (b)

> On motion and upon such terms as are just, the court my relieve a party or a party's legal representative from

a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud, (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

STATEMENT OF THE CASE

The Petitioner, Dr. Robert Alexander Burkich, MD, was a quiet, dedicated, physician with no criminal record nor criminal association when he was mistakenly targeted for an auto-theft scheme because he was believed to be the high-profile owner of a popular, local club (th Web Site) and a 1997 Corvette. The Government's auto-theft and insurance scam was focusing on Corvettes, and the Petitioner regularly drove the 1997 Corvette belonging to his business partner.[1]

In or around October of 2000, a Mr. Mac Heard was referred to the Petitioner, Mr. Heard was a convicted felon with a lengthy criminal history and was working as a

[1] The Web Site was actually owned by the Petitioner's father, Dr. Alexander Nicholas Burkich, DDS, while the 1997 Corvette was owned by the Petitioner's business partner, Fred Bayne